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BEFORE THE ARIZONA CORPORATION COMMISSION**COMMISSIONERS**

Arizona Corporation Commission

DOCKETED

SEP 19 2017

DOCKETED BY 

TOM FORESE – Chairman
 BOB BURNS
 DOUG LITTLE
 ANDY TOBIN
 BOYD W. DUNN

IN THE MATTER OF

NORTH COUNTY COMMUNICATIONS
 CORPORATION OF ARIZONA,

Complainant,

v.

QWEST CORPORATION d/b/a CENTURYLINK
 QC,

Respondent.

DOCKET NO. T-03335A-12-0368

DOCKET NO. T-01051B-12-0368

DECISION NO. 76367**ORDER**

Open Meeting
 September 12 and 13, 2017
 Phoenix, Arizona

BY THE COMMISSION:

* * * * *

Having considered the entire record herein and being fully advised in the premises, the Arizona Corporation Commission (“Commission”) finds, concludes, and orders that:

FINDINGS OF FACT**I. Procedural History**

1. On August 16, 2012, North County Communications Corporation of Arizona (“NCC”) filed a formal complaint with the Arizona Corporation Commission (“Commission”) against Qwest Corporation d/b/a CenturyLink QC (“CenturyLink”) (“Complaint”).¹ NCC alleged that CenturyLink had not paid for local call termination services as required under the parties’ 1997 and 2011 Interconnection Agreements (“ICAs”), utilized an inappropriate formula for determining which calls

¹ At various times in the course of the parties’ dealings, the company now known as CenturyLink was known as Qwest and before that as US West Communications. In an attempt to avoid confusion, the company will be referred to as CenturyLink throughout this Decision.

1 were subject to local termination charges, and improperly billed for multiplexing (“MUX”) fees, circuit
2 installation charges, and Call Detail Records.

3 2. On September 10, 2012, CenturyLink filed its Answer, Affirmative Defenses and
4 Counterclaims, denying the allegations, and bringing a counterclaim, which alleged over-charges by
5 NCC for call termination, and failure to pay for local interconnection trunks and transmitting records.

6 3. On September 24, 2012, NCC filed an Answer to CenturyLink’s Counterclaims. NCC
7 argued that CenturyLink’s claims are barred and the underlying contracts void because they were
8 obtained by fraudulent representations to the Commission and NCC; by the doctrine of unclean hands;
9 and by its failure to mitigate by refusing to allow NCC to submit change orders that would have reduced
10 the charges that CenturyLink alleges are owed.

11 4. By Procedural Order dated September 27, 2012, the matter was set for hearing in
12 December 2012.

13 5. On October 26, 2012, the parties filed a Joint Motion to Continue Procedural Schedule
14 in order to allow more time to prepare for hearing.

15 6. By Procedural Order dated October 30, 2012, the hearing was vacated, and either party
16 was granted leave to file a request to proceed.

17 7. On December 20, 2012, CenturyLink filed an Amended Answer, Affirmative
18 Responses, and Counterclaims. CenturyLink included additional Affirmative Defenses: that NCC
19 failed to bill; that the parties did not agree to suspend all obligations to pay for services; and
20 alternatively, that NCC’s claim was not ripe. CenturyLink also added that NCC’s bills for local call
21 termination are invalid because it does not provide telecommunications service under federal law, the
22 traffic is not terminated locally, and does not meet the definition of traffic subject to termination
23 charges. CenturyLink expanded its Counterclaims to include allegations that it is entitled to a refund
24 for a traffic pumping scheme, that mischaracterization of the traffic resulted in unjust enrichment, that
25 CenturyLink is entitled to a refund of charges paid for the termination of Jointly Provided Switched
26 Access (“JPSA”) traffic;² that NCC failed to pay for Local Interconnection Service (“LIS”) trunks and

27 ² JPSA is a service provided to Interexchange carriers (IXCs”) that is provided by more than one carrier and is sometimes
28 known as Meet-Point-Billing. Special access charges are set by tariff and JSA traffic is not subject to reciprocal
compensation rates which are relevant to local traffic.

1 MUX charges; that the ICA should be terminated for material breach of contract; and NCC's CC&N
2 should be revoked.

3 8. On January 2, 2013, NCC filed An Amended Answer to CenturyLink's Counterclaims.
4 NCC added the Affirmative Defense that the underlying contracts are void because they were obtained
5 by fraudulent representations, and were barred by federal preemption which requires adjudication by
6 the Federal Communications Commission ("FCC").

7 9. On January 31, 2013, CenturyLink filed a Motion for Partial Summary Judgment
8 ("MPSJ"). CenturyLink alleged that in arbitrating the 2011 ICA,³ the Commission determined the
9 Complaint's claims related to the transmittal of Automatic Number Information ("ANI") using Multi
10 Frequency ("MF") signaling, the formula for calculating amounts owed for local call termination,
11 MUX fees, circuit installation charges, and billing records charges, and NCC cannot re-litigate these
12 issues based on the doctrines of *res judicata* and collateral estoppel. The MPSJ included the Affidavit
13 of Renee Albersheim explaining how CenturyLink calculated the charges under the terms of the 2011
14 ICA.

15 10. NCC filed an appeal of the arbitrated 2011 ICA with the Federal District Court of
16 Arizona on March 6, 2013.

17 11. On March 7, 2013, NCC filed its Opposition to CenturyLink's MPSJ arguing that
18 because the ICA is being appealed, the matter should be stayed pending the outcome. In addition, NCC
19 argued that CenturyLink's assertions of *res judicata* and collateral estoppel did not bar NCC's claims
20 because NCC was challenging CenturyLink's conduct as contrary to the language of the ICAs. NCC
21 attached the affidavit of Todd Lesser in which he states: CenturyLink used an unauthorized billing
22 methodology contrary to the Sections 7.1.1 and 7.2.1.1 of the 2011 ICA;⁴ that the 2011 ICA does not
23 authorize CenturyLink to place a hold on NCC's ordering activities, including orders that would
24 prevent incurring MUX charges;⁵ CenturyLink improperly charged NCC for MUX charges instead of
25 the interexchange carrier ("IXC") pursuant to Sec. 7.3.2.2.1 of the 2011 ICA;⁶ CenturyLink has forced

26 ³ Decision No. 72499 (July 25, 2011).

27 ⁴ Paras. 3 and 4 of Lesser affidavit. Mr. Lesser states that CenturyLink used arbitrary "jurisdictional factors" to determine
the billable minutes.

28 ⁵ *Id.* at ¶ 5.

⁶ *Id.* at ¶ 6.

1 NCC to incur unnecessary charges by refusing to install trunks to deliver CenturyLink traffic to NCC;
2 and has shifted costs to NCC by requiring it to place orders for trunks, by refusing to comply with
3 routing instructions for all JPSA traffic bound for NCC, and by requiring NCC to purchase call detail
4 records because CenturyLink won't transmit ANI over MF;⁷ and CenturyLink has refused to provide
5 NCC with monthly summaries of call totals.⁸

6 12. On April 1, 2013, CenturyLink filed a Reply in Support of its MPSJ. CenturyLink
7 argued that in approving the arbitrated 2011 ICA, the Commission had already considered NCC's
8 claims that the 2011 ICA was unenforceable and should not re-examine that decision. Furthermore,
9 CenturyLink argued that in Decision No. 72499, the Commission authorized a workaround for the
10 calculation of billable local call termination minutes; and authorized CenturyLink to charge for MUX,
11 circuit installation and Call Detail Records. Attached to its Reply, CenturyLink included the
12 Supplemental Affidavit of Renee Albersheim which included confidential exhibits. Ms. Albersheim
13 states that CenturyLink complied with the billing methodology contained in the 2011 ICA and did not
14 use "jurisdictional factors" after the 2011 ICA went into effect, but did use these factors, with NCC's
15 agreement, under the 1997 ICA.⁹ Further, she states that CenturyLink provided monthly reports as
16 required under the 2011 ICA to NCC, so that NCC can bill CenturyLink, but that NCC has not billed
17 CenturyLink since July 2008.¹⁰ Ms. Albersheim states that Mr. Lesser's facts concerning CenturyLink
18 discontinuing to process NCC's orders in April 2012 are incomplete as CenturyLink agreed to allow
19 NCC to submit orders beginning July 16, 2012 so that NCC would eliminate the need for multiplexing,
20 and that NCC has had the ability to order alternate services.¹¹ Ms. Albersheim states further that
21 CenturyLink's traffic data indicates that JPSA traffic that terminates at NCC is being routed through a
22 third party transit provider, as none has been routed through CenturyLink since July 2012, and thus,
23 NCC no longer has a need for Call Detail Records for JPSA traffic from CenturyLink. Finally, she

24 ⁷ *Id.* at ¶¶ 7, 8 and 9.

25 ⁸ *Id.* at ¶ 10.

26 ⁹ Supplement Albersheim Affidavit at ¶ 2.

27 ¹⁰ *Id.* at ¶ 3. Confidential Exhibit a to the affidavit is a series of emails indicating the transmission of minutes of use for
28 Arizona and Oregon and a discussion concerning the responsibility for notifying carriers where to route transit or JPSA
traffic.

¹¹ *Id.* at para 4 and Confidential Attachments 2 and 3 comprised of emails exchanges restoring ordering and providing
ordering instructions. CenturyLink asserts that Section 5.4.2 of the 2011 ICA allows one party to discontinue processing
orders when the other party has failed to make payments.

1 states that NCC has not paid for Call Detail Records since December 2008 and has stopped requesting
2 Call Detail Records.¹²

3 13. On April 2, 2013, CenturyLink filed a Request for Procedural Conference stating its
4 MPSJ was ripe for decision.

5 14. By Procedural Order dated April 12, 2013, the Complaint, Counterclaims and MPSJ
6 were held in abeyance pending adjudication of NCC's lawsuit by the Federal District Court. The parties
7 were directed to file periodic status updates.

8 15. On May 6, 2013, CenturyLink filed a Motion to Reconsider Abeyance Procedural
9 Order. CenturyLink argued that the hearing on those issues in NCC's Complaint that are not dependent
10 on the validity of the 2011 ICA should proceed.

11 16. On May 15, 2013, NCC filed a Response to CenturyLink's Motion to Reconsider. NCC
12 argued that depending on the Federal District Court's decision, the 1997 ICA may provide the basis
13 for calculating charges, and thus, a complete and accurate accounting could not be performed at the
14 time.

15 17. On May 21, 2013, CenturyLink filed a Reply in Support of its Motion for
16 Reconsideration. CenturyLink argued that the disputes arising from the 1997 ICA are not affected by
17 Federal court action, and that a decision by the Commission on the interpretation of the 1997 ICA is a
18 necessary step.¹³

19 18. On May 30, 2013, July 30, 2013, and September 30, 2013, the parties filed status
20 updates to keep the Commission informed of the Federal Court schedule.

21 19. On March 13, 2014, CenturyLink filed a Status Update indicating that the United States
22 District Court of Arizona issued its Judgment and Order upholding the validity of the 2011 ICA.¹⁴
23 CenturyLink reported that NCC filed an appeal of the Arizona District Court Order with the United
24 States Ninth Circuit Court of Appeals on January 27, 2013.¹⁵ As a point of information, CenturyLink
25 reported that a companion case filed by NCC in the United States District Court for the District of
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27 ¹² *Id.* at ¶ 6.

¹³ The Commission did not act on the Motion to Reconsider which in effect denied the motion.

¹⁴ CenturyLink attached a copy of the District Court's Order.

¹⁵ United States Ninth Circuit Court of Appeals, Case No. 14-15115.

1 Oregon involving an ICA arbitrated by the Oregon Public Utility Commission also resulted in denial
2 of the relief sought by NCC. CenturyLink further reported that on March 10, 2014, it mailed NCC a
3 notice of past due balances, alerting NCC that if NCC did not remit payment on or before April 10,
4 2014, CenturyLink would suspend all service order activity and begin the disconnection of service
5 process.

6 20. On April 23, 2014, CenturyLink filed a Status Update indicating that as of April 22,
7 2014, CenturyLink had not received the requested payment from NCC, and stating its intent to proceed
8 to disconnect services under the terms of the ICA.

9 21. On May 2, 2014, NCC filed a Status Update indicating that the Ninth Circuit Court of
10 Appeals consolidated NCC's appeals of the decisions of the Arizona and Oregon District Courts, and
11 established a briefing schedule. In response to the April 23, 2014 Status Update, NCC stated that
12 CenturyLink's proposed disconnection of services would constitute unlawful call blocking which
13 would prevent CenturyLink's customers from placing calls to NCC's customers, and violated Sections
14 201 and 202 of the Communications Act of 1934, as amended by the Telecommunications Act of
15 1996.¹⁶ NCC did not seek Commission action.

16 22. On June 22, 2016, CenturyLink filed a Status Update and Request for Procedural
17 Conference. CenturyLink indicated that the U.S. Court of Appeals for the Ninth Circuit affirmed the
18 District Court's finding for CenturyLink and the Commission on their motions for summary judgment,
19 and denied NCC's motion for summary judgment.¹⁷ CenturyLink asserted that the ruling by the Ninth
20 Circuit warranted the Commission re-activating the Complaint, Counterclaims, and Motion for
21 Summary Judgment. CenturyLink requested a procedural conference be convened.

22 23. By Procedural Order dated July 28, 2016, a telephonic procedural conference was set
23 for October 5, 2016. On October 4, 2016, NCC filed a Motion for Continuance of the Procedural
24 Conference due to an unexpected scheduling conflict. By Procedural Order dated October 5, 2016, the
25 telephonic Procedural Conference for the purpose of discussing the process for resolving any remaining
26

27 ¹⁶ NCC cited *Establishing Just and Reasonable Rates for Local Exchange Carriers; Call Blocking by Carriers*, WC Docket
28 No. 07-135, 22 FCC Rcd 11629; and *Developing an Unified Intercarrier Compensation Regime; Establishing Just and Reasonable Rates for Local Exchange Carriers*, WC Docket No. 07-135, 27 FCC Rcd 1351.

¹⁷ CenturyLink attached the Ninth Circuit Court of Appeals Opinion.

1 issues raised by the Complaint and Counterclaims was set to commence on October 7, 2016.

2 24. The October 7, 2016 Procedural Conference, convened as scheduled, with CenturyLink,
3 NCC, and the Commission's Utilities Division ("Staff") appearing through counsel. CenturyLink
4 proposed that the parties prepare and file an issues list and matrix which would identify the amounts
5 alleged to be owed by each party, with cites to the relevant sections of the ICA, and include a response
6 to each charge by the other party. NCC agreed to the proposal.¹⁸

7 25. By Procedural Order dated October 7, 2016, the parties were directed to file a Joint
8 Issues Matrix by November 10, 2016, as discussed at the Procedural Conference.

9 26. On November 10, 2016, CenturyLink filed a list of its claims against NCC, but stated
10 that it had not received information from NCC about that company's claims in order to complete the
11 "joint" filing.

12 27. NCC did not respond to the October 7, 2016 Procedural Order, and by Procedural Order
13 dated November 29, 2016, was directed to file an issues matrix by December 16, 2016, or the matter
14 would be dismissed.

15 28. NCC filed an Issue Matrix on December 16, 2016. The matrix did not respond to the
16 issues identified by CenturyLink nor did it provide dollar amounts for NCC's claims.

17 29. CenturyLink's Issues Matrix includes 7 issues:

18 (1) CenturyLink is owed a refund for NCC bills paid by CenturyLink from May 2007
19 through June 2008, for the minutes of use that should have been excluded from
20 NCC's invoice.¹⁹

21 (2) CenturyLink is owed interest on the refund pursuant to 1997 ICA Section XXXIV
22 (D).

23 (3) CenturyLink is owed for charges on bills from CenturyLink to NCC from June 2009
24 through November 2014 (BAN 602 L08-0012 012).

25 (4) CenturyLink is owed for charges on bills from CenturyLink to NCC from June 2011
26 through November 2014 (BAN L04-0007 007).

27 ¹⁸ Transcript of the October 7, 2016 Procedural Conference at 5. Counsel for NCC requested that the Procedural Order
28 directing the filing of the issues matrix contain a filing deadline.

¹⁹ A copy of the August 14, 2008 letter is attached to CenturyLink's Answer filed December 20, 2012.

- 1 (5) CenturyLink is owed for charges on bills from CenturyLink to NCC from December
2 2007 through October 2014 (BAN AZ-NCCC-72).
- 3 (6) CenturyLink is owed for charges on bills from CenturyLink to NCC from
4 September 2014 through May 2014 (sic) (BAN 520 882-2881 679).²⁰
- 5 (7) CenturyLink claims that it is owed interest on the unpaid bills in claims 2-6 at a rate
6 and amount to be shown at hearing.
- 7 30. NCC 's Issue Matrix includes 12 issues as follows:
- 8 (1) CenturyLink failed to pay NCC local call termination invoices since January 2009
9 (based on the 1997 ICA Sections II.A, V, V.C.1, V.D.a and Appendix 1).
- 10 (2) CenturyLink imposed a formula not incorporated or authorized in the 1997 ICA to
11 determine the amounts billed by NCC, which formula NCC asserts understated
12 CenturyLink's payment obligations from January 2009 through July 2011, and
13 mislead NCC concerning the basis of the formula.
- 14 (3) CenturyLink refused to transmit ANI which caused NCC to under-bill minutes of
15 use, and CenturyLink mislead NCC when it claimed it did not have the capability
16 to transmit ANI over MF.
- 17 (4) CenturyLink imposed MUX charges even though the 1997 ICA did not allow for
18 these charges.
- 19 (5) CenturyLink unlawfully charged NCC for 100 percent of the interconnection
20 circuit installation charges when no such charges are authorized in the 1997 ICA.
- 21 (6) CenturyLink improperly charged NCC for Call Detail Records contrary to the 1997
22 ICA and the Telecom Act.
- 23 (7) If CenturyLink is allowed to recover MUX charges from NCC, NCC should also
24 be allowed to recover its MUX charges.
- 25 (8) CenturyLink mislead the Commission about the cost of providing call records.
- 26 (9) CenturyLink unlawfully disconnected circuits to NCC when no balance was due
27

28 ²⁰ Because May 2014 is prior to September 2014, one of these dates appears to be in error, or reversed.

1 on those circuits.

2 (10) CenturyLink's claims should be dismissed because it failed to preserve records
3 supporting its overbilling claim

4 (11) CenturyLink's MUX charges violate the Telecom Act by charging NCC for the
5 cost of delivering its own traffic to NCC.

6 (12) CenturyLink waived its billing disputes by not filing them timely.

7 31. A Procedural Order dated November 29, 2016, established the process for consenting
8 to service by email.

9 32. By Procedural Order dated January 10, 2017, a telephonic Procedural Conference was
10 set for January 26, 2017, to discuss the procedures for resolving the disputes.

11 33. On January 18, 2017, CenturyLink filed a Motion to Dismiss or Exclude Certain Claims
12 made by Complainant, and renewed its January 31, 2013 Motion for Partial Summary Judgment
13 ("Motion to Dismiss") CenturyLink argued: (1) NCC's Matrix Issue 1 (regarding CenturyLink failure
14 to pay for local call termination) should be dismissed because NCC unilaterally stopped sending
15 invoices when it could have done;²¹ (2) NCC Matrix Issue 3 (Transmission of ANI) should be dismissed
16 because it was addressed in the 2011 ICA arbitration; (3) NCC Matrix Issues 4 and 11 (MUX charges)
17 should be dismissed because the 1997 ICA provides for multiplexing charges in Section IV.C.2.d and
18 e, and the arbitrated 2011 ICA upheld and approved MUX charges; (5) NCC Matrix Issue 5 (circuit
19 installation charges) should be dismissed because they were authorized under section IV, V, and
20 Appendix A to the 1997 ICA (which NCC never challenged) and Section 7 and Exhibit A of the 2011
21 ICA; and (6) NCC's Matrix Issues 6 and 8 (Call Detail Records) are authorized by the Arbitrated ICA
22 and should be dismissed as a collateral attack, as NCC did not raise the issue during the arbitration.

23 34. On January 19, 2017, CenturyLink filed a Consent to Service by Email.

24 35. On January 26, 2017, a Procedural Conference convened as scheduled. CenturyLink
25 appeared telephonically through counsel. NCC did not appear, and counsel for CenturyLink was
26

27 ²¹ CenturyLink argues that NCC's failure to state a liquidated amount for its claims is an inadequate response to the
28 Commission Order directing the filing of the Issues Matrix, and that NCC's claim should be dismissed for failure to
prosecute. CenturyLink also cites to the Communications Act of 1934, as amended, that provides that actions for recovery
of charges shall begin within two years from the time the cause of action arises. 47 U.S.C. section 415(a).

1 unsuccessful in contacting NCC counsel at the time of the Procedural Conference.

2 36. By Procedural Order dated February 15, 2017, NCC was ordered to file a response to
3 CenturyLink's Motion to Dismiss and Show Cause why its Complaint should not be dismissed for
4 failure to comply with Commission orders.

5 37. On March 6, 2017, NCC filed a Response to the CenturyLink Motion to Dismiss, and a
6 Response to Procedural Order and Declaration of R. Dale Dixon, Jr., as well as a Consent to Email
7 Service.

8 38. In its Response to CenturyLink's Motion to Dismiss, NCC argued that its claims should
9 not be dismissed because it did not unilaterally stop invoicing CenturyLink, but that by way of a tolling
10 and other agreements, the parties agreed that NCC would not bill CenturyLink until they established
11 an accurate billing formula. NCC states that it "is not seeking to readdress the 2011 ICA" and is "quite
12 aware that the 2011 ICA is set in stone at this point."²² However, NCC argued that the 2011 ICA cannot
13 be used to interpret the 1997 ICA. It claims that it cannot provide dollar amounts for its claims because
14 an accurate formula for compensation was not established, and other claims are not quantifiable. NCC
15 argues that to determine the amount owed to NCC, the Commission needs to examine the 1997 ICA as
16 it pertains to ANI, and the imposition of charges for multiplexing, circuit installation and call detail
17 records.²³

18 39. In its Response to the Procedural Order, NCC states that it does not believe that a hearing
19 is necessary to resolve the parties' disputes and requests that the Commission establish a briefing
20 schedule under which the parties will submit motions and cross-motions for summary judgment. NCC
21 suggested that prior to requiring the filing of motions that the parties engage in a Commission-led,
22 mediation. In addition, NCC's counsel states that he did not receive either CenturyLink's Motion to
23 Dismiss or the January 26, 2017 Procedural Order that scheduled the January 26, 2017 Procedural
24 Conference. He described steps being taken to avoid a recurrence of missing filings.

25 40. On March 14, 2017, CenturyLink filed a Reply in Support of its Motion to Dismiss.
26 CenturyLink disagreed that a mediation is appropriate given the late stage of the proceeding, and argued

27 ²² NCC Response to Motion to Dismiss at 2.

28 ²³ NCC claims that the determination of damages will be hindered by the fact that CenturyLink destroyed records that relate to NCC's claims, losses, and damages for unpaid invoices.

1 that NCC's Response overlooked the fact that CenturyLink's Motion for Partial Summary Judgment
2 and Motion to Dismiss are already before the Commission. CenturyLink requests that the Commission
3 proceed in its consideration of CenturyLink's January 31, 2013 MPSJ and its January 18, 2017 Motion
4 to Dismiss.

5 41. On March 31, 2017, counsel for NCC filed a Motion to Withdraw as Counsel of Record
6 with Client Approval. William Klain, local counsel, and R. Dale Dixon, who had been granted
7 admission *pro hac vice* to represent NCC in this matter, moved to withdraw as counsel of record; they
8 indicated that NCC desires that its President, Mr. Todd Lesser, represent it in this matter. Mr. Lesser
9 signed the Motion indicating NCC's approval.

10 42. By Procedural Order dated April 4, 2017, the Motion to Withdrawal was held in
11 abeyance while NCC was directed to file evidence of compliance with Rule 31 of the Rules of the
12 Supreme Court of Arizona concerning authorization for an officer to represent the company before the
13 Commission.

14 43. NCC had not submitted the corporate resolution as of April 25, 2017. On that date, a
15 Procedural Order was issued that scheduled a telephonic Procedural Conference for May 8, 2017 to
16 resolve any confusion about the need for a corporate resolution and to discuss a process going forward.
17 The April 25, 2017 Procedural Order directed the parties to file updated Issues Matrixes by May 5,
18 2017.

19 44. On May 1, 2017, NCC filed a corporate resolution that authorized its president, Mr.
20 Lesser, to represent it in this matter.

21 45. On May 5, 2017, the parties filed updated Issues Matrixes.

22 46. The parties appeared telephonically as scheduled on May 8, 2017. Mr. Lesser
23 acknowledged that he understood the Commission's rules concerning representation by a corporate
24 officer.

25 47. By Procedural Order dated May 17, 2017, the Motion to Withdraw by NCC's counsel
26 was granted; NCC was directed to file updated responses to CenturyLink's MPSJ and Motion to
27 Dismiss by May 31, 2017, and was directed to include references to the updated Issues Matrixes;
28 CenturyLink was directed to file any Reply to NCC's updated Responses by June 14, 2017; and a

1 deadline of June 14, 2017 was established for any additional motions for summary judgment or motions
2 to dismiss by either party.

3 48. On June 1, 2017, NCC filed a Response to Procedural Order and Declaration of Todd
4 Lesser, which contained NCC's updated Responses to CenturyLink's MPSJ and requested a one day
5 mediation with the Commission's technical Staff.

6 49. On June 14, 2017, CenturyLink filed its Reply pursuant to the May 17, 2017 Procedural
7 Order.

8 50. On June 15, 2017, NCC filed a Motion for Partial Summary Judgment. NCC's Motion
9 is half a page and alleges in its substantive entirety: "CenturyLink has submitted a billing dispute to
10 this Commission for past billings on NCC of AZ. CenturyLink has now admitted that they destroyed
11 all the documents and possess nothing to support this claim. NCC of Arizona respectfully requests that
12 Commission dismiss this action."

13 51. On June 26, 2017, CenturyLink filed an Opposition to NCC's Motion for Partial
14 Summary Judgment. CenturyLink argues that the Motion was filed after the June 14, 2017 deadline for
15 additional motions; does not identify the issues it addresses with sufficient specificity to allow
16 CenturyLink or the Commission to evaluate it; is deficient because it claims that CenturyLink made an
17 admission, but has not identified the circumstances of such admission; and does not include a Statement
18 of Facts as required by Ariz. Rule Civ. Proc. 56(c)(3)(A). CenturyLink disputes the allegation that it
19 has destroyed records necessary to support its counterclaims and defenses.

20 **II. The Parties' Arguments**

21 **A. CenturyLink's Motion for Partial Summary Judgment**

22 52. In its MPSJ, CenturyLink argued that: Decision No. 72499, is a final Order of the
23 Commission that resolved the issues surrounding NCC's use of the MF signaling system and whether
24 CenturyLink is required to transit ANI using MF; established the proper formula for calculating the
25 amounts owed by CenturyLink to NCC; and authorized MUX charges, circuit installation charges,
26 and billing records charges. In support of its MPSJ, CenturyLink provided the Affidavit of Renee
27
28

1 Albersheim.²⁴

2 53. CenturyLink notes that the two prerequisites to entry of summary judgment are: (1) the
3 record must show there is no genuine dispute as to any material fact, and only one inference can be
4 drawn from the undisputed material facts; and (2) based on the undisputed material facts, the moving
5 party is entitled to judgment as a matter of law.²⁵

6 54. CenturyLink argues that the doctrine of *res judicata* bars a later suit based on the same
7 cause of action and precludes a claim when a former judgment on the merits was rendered by a court
8 of competent jurisdiction and the matter now at issue between the same parties was, or might have been
9 determined in the former action.²⁶ CenturyLink also argues that collateral estoppel precludes re-
10 litigation on an issue of law or fact when (1) the issue was actually litigated in the previous proceeding;
11 (2) there was a full and fair opportunity to litigate the issue; (3) resolution of the issue was essential to
12 the decision; (4) there was a valid and final decision on the merits; and (5) there is common identity of
13 the parties.²⁷ Century asserts that both *res judicata* and collateral estoppel are appropriately raised by
14 motion for summary judgment and that the determination of a claim or issue by an administrative body
15 such as the Commission qualifies for the application of the doctrines, provided that the administrative
16 agency makes its determination in its judicial or quasi-judicial capacity.

17 **1. MF Signaling and Transmission of ANI**

18 55. In its Complaint, NCC alleged that CenturyLink can transmit ANI to NCC using MF
19 signaling, and that simple changes to the CenturyLink switches would allow CenturyLink to transmit
20 the calling number information, and that CenturyLink's refusal to do so "defrauded" NCC into
21 accepting less than what CenturyLink owes NCC for call termination charges.²⁸ CenturyLink argues
22 that NCC's position on the MF signaling issue was fully and fairly litigated on the merits during the
23 arbitration proceeding that resulted in Decision No. 72499. In Decision No. 72499 the Commission
24 found:²⁹

25 ²⁴ For purposes of this proceeding, the affidavits filed by either party in support of its motion for summary judgment are
26 being treated as the Statement of Facts that is otherwise required under Arizona's Rules of Civil Procedure.

²⁵ *Dutch Inns of America, Inc. v. Horizon Corp.*, 18 Ariz. App. 116, 500 P.2d 901 (1972).

²⁶ MPSJ at 5, citing *Better Homes Constr. Inc. v Goldwater*, 203 Ariz. 295, 298, ¶ 13, 53 P.3d 1139, 1142 (app. 2002).

²⁷ *Irby Constr. Co. v. Ariz. Dep't of Revenue*, 184 Ariz 105, 107, 907 P.2d 74, 76 (App. 1995).

²⁸ Complaint at ¶ 34 and 35.

²⁹ Decision No. 72499 at 16.

- “[CenturyLink] has demonstrated a legitimate concern that it cannot receive accurate bills from NCC which appears to be due, at least in part to NCC’s use of MF signaling.” “NCC did not provide persuasive testimony or other authority that refutes [CenturyLink’s] position that there is significant difference between local interconnection trunks and IXC trunks and that traffic is signaled differently depending on its nature as local or toll.”
- “NCC did not provide evidence that it would be feasible for [CenturyLink] to reconfigure its local trunks to provide ANI over MF.”
- “Neither did NCC cite any authority that would require [CenturyLink] to reconfigure its local trunks to provide ANI over MF.”
- “The evidence indicates that [CenturyLink’s] practice under which ANI is not provided over local trunks comports with industry practice.”

56. CenturyLink asserts that these same parties litigated this same issue and the Commission’s resolution of the MF signaling claim “squarely, unambiguously, and fully held against NCC.”³⁰

2. Calculation of Local Call Termination Charges

57. NCC asks the Commission to enter an order “establishing the proper formula for calculating the amounts owed by CenturyLink to NCC for local call termination.” CenturyLink asserts that the Commission adopted CenturyLink’s proposal that would allow NCC to continue to utilize MF Signaling with conditions and established the methodology for compensation local call termination.³¹ CenturyLink argues that the Commission’s approval of the billing procedure in the 2011 ICA is a final decision on the merits that cannot be re-litigated.

3. MUX Fees.

58. NCC’s Complaint asks the Commission to declare CenturyLink’s imposition of MUX

³⁰ MPSJ at 7.

³¹ Decision No. 72499 at 6 and 17. CenturyLink referenced Sections 7.1.1 and 7.2.1.1 as establishing the billing methodology which requires CenturyLink to provide manual reports to NCC so that the latter can generate local call termination bills. See MPSJ at 8-9. CenturyLink’s statements in its MPSJ leaves the impression that section 7.1.1 and 7.2.1.1 establish the billing procedure. They do not. In fact, section 7.8 sets forth the billing methodology. Section 7.8 was adopted in Decision No. 72499. See Decision No. 72499 at 18 ¶77.

1 fees to be unlawful, or if they are allowed at all, the costs should be shared between NCC and
 2 CenturyLink based on a relative use factor.³² CenturyLink asserts that NCC raised these issues in the
 3 arbitration and the matter cannot be re-litigated.

4 **4. Circuit Installation Charges**

5 59. NCC's Complaint seeks a refund of circuit installation charges paid to CenturyLink, on
 6 the theory that 100% of the traffic on the circuits is traffic from CenturyLink to NCC.³³ CenturyLink
 7 asserts that the issue of nonrecurring charges for LIS trunks ordered by NCC was raised by NCC in the
 8 Arbitration.³⁴ CenturyLink states that as a result of the arbitration, the Commission approved Section
 9 7.3.3.1 of the 2011 ICA which provides: "[i]nstallation and disconnection nonrecurring charges may
 10 be assessed by the provider for each LIS trunk ordered. CenturyLink rates are specified in Exhibit A."
 11 Thus, CenturyLink argues that the Commission resolved the nonrecurring circuit fee issue "squarely,
 12 unambiguously, and fully" against NCC, and NCC cannot re-litigate the matter.³⁵

13 **5. Call Detail Records.**

14 60. NCC alleges that CenturyLink may not lawfully charge for "Call Detail Records" that
 15 NCC needs in order to bill for local call termination services, and argues that the Commission should
 16 require CenturyLink to refund past charges.³⁶ CenturyLink asserts that Call Detail Records for JPSA
 17 traffic and transit traffic (both of which originate with carriers other than CenturyLink) are necessary
 18 for NCC to properly bill the originating carriers and that both the 1997 and the 2011 ICAs specifically
 19 provide for charges for JPSA traffic and transit records.³⁷

20 61. CenturyLink asserts that NCC raised the issue of Call Detail Records in the Arbitration,
 21 but did not provide testimony or argument even though the contract language proposed by CenturyLink
 22 in the Arbitration addressed the charges for JPSA and transit detail records.³⁸

23
 24 ³² Complaint at 7. NCC also alleges that neither the 1997 nor the 2011 ICA permits CenturyLink to impose MUX charges on NCC.

25 ³³ *Id.*

26 ³⁴ Decision No. 72499 at 23.

27 ³⁵ MPSJ at 11.

28 ³⁶ Complaint at 8.

³⁷ MPSJ at 11.

³⁸ MPSJ at 11-12. *See* NCC Post Hearing Brief in Docket Nos. T-03335A-09-383 and T-01051B-09-0383 at 2. In Decision No. 72499 at footnote 8, the Commission noted: "NCC lists the charges for billing records as an issue in this proceeding, but did not provide testimony or argument about this issue."

62. CenturyLink asserts that for NCC to properly bill for local call termination services, traffic that does not qualify for local termination compensation (such as JPSA and transit traffic) must be deleted from the calculation of local call termination charges. The Arbitration Order adopted CenturyLink's proposal to manually prepare reports for NCC to use in generating its bill, and the 2011 ICA provides that CenturyLink will provide summary level call quantities and minutes, by month, for traffic originated from sources other than CenturyLink.³⁹ CenturyLink states that this information is reported to NCC every month at no charge.⁴⁰ However, CenturyLink notes that NCC still needs the Call Detail Records of JPSA and transit traffic to bill those minutes to the other carriers.⁴¹

63. CenturyLink argues that charges for the JPSA and transit records charges were incorporated in the 2011 ICA without charge and NCC did not object to the filed agreement, which was approved by operation of law. CenturyLink argues that the issue of charging for these records was clearly before the Commission in the Arbitration, and that NCC had a fair chance to fully litigate the question, but let the matter go by default. CenturyLink argues that NCC should not be permitted to litigate the question now.

6. Amounts Due From NCC to CenturyLink.

64. CenturyLink also states that it has billed NCC for the amounts it claims are due, provided notice of nonpayment and notice of default, and given notice of termination of services for nonpayment, as required by the ICA.⁴² CenturyLink seeks an order from the Commission requiring NCC to make payment, plus interest. With respect to NCC's claim that it has the right to setoff its liability as an affirmative defense, CenturyLink denies that it owes NCC any money, and furthermore that the ICA does not allow setoff of liabilities. CenturyLink states that Section 5.4.4 of the 2011 ICA provides that any dispute NCC wishes to make must be noticed to CenturyLink and all undisputed amounts must be paid.⁴³

³⁹ MPSJ at 12; 2011 ICA at § 7.8.1.3(d).

⁴⁰ MPSJ at 12.

⁴¹ Albersheim Affidavit at ¶ 13.

⁴² MPSJ at 13, Albersheim Affidavit at ¶ 11.

⁴³ MPSJ at 13-14, 2011 ICA at Section 5.4.4, which provides:

Should CLEC or Qwest dispute in good faith, any portion of the charges under this Agreement, the Parties will notify each other in writing within fifteen (15) Days following the payment due date identifying the amount, reason and rationale of such dispute. At a minimum, CLEC and Qwest shall pay all undisputed amounts due. Both CLEC and Qwest agree to expedite the investigation of any

1 **B. NCC's Response to CenturyLink's MPSJ**

2 65. NCC argued that the MPSJ should be denied because the 2011 ICA was obtained
3 through deception and fraud. NCC also asserted that the MPSJ was deficient because it failed to identify
4 which causes of action CenturyLink wanted the Commission to dismiss.⁴⁴

5 66. NCC argued that principles of *res judicata*, claim preclusion, and collateral estoppel do
6 not bar NCC's claims, because NCC was challenging the validity of the 2011 ICA in the Federal court,
7 and because NCC was challenging CenturyLink's interpretation and implementation of the 2011 ICA.
8 NCC argued that CenturyLink's interpretation and implementation of the 2011 ICA, as well as its
9 refusal to pay reciprocal compensation, are contrary to the terms of the agreement and contrary to law.⁴⁵

10 67. NCC argued that the FCC has required carriers like CenturyLink to provide ANI over
11 MF signaling, and CenturyLink has an obligation under the 2011 ICA to comply with all laws.⁴⁶

12 68. NCC argues that in approving CenturyLink's limitations on NCC's use of MF signaling,
13 the Commission did not approve the formula that CenturyLink used to limit NCC's compensation, and
14 that Sections 7.1.1 and 7.2.1.1 of the 2011 ICA do not refer to a billing methodology.⁴⁷ In addition,
15 NCC argues that the Commission did not approve the assumptions that CenturyLink unilaterally
16 inserted in its billing formula, "or the other distortions of fact" that CenturyLink used to determine
17 what it will pay NCC and what NCC owes CenturyLink.⁴⁸ NCC asserts that "the Commission did not
18 approve CTL's use of arbitrary numbers for "jurisdictional factors" in Phoenix and Tucson, and those
19
20

21 disputed amounts, promptly provide reasonably requested documentation regarding the amount
22 disputed, and work in good faith in an effort to resolve and settle the dispute through informal means
23 prior to invoking any other rights or remedies.

24 ⁴⁴ *Id.* at 1. NCC's Response was filed before the Commission held the matter in abeyance during the appeal to the federal
25 courts.

26 ⁴⁵ *Id.* at 2-3. NCC appears to be referring to the 2011 arbitrated ICA that was the subject of its federal court case.

27 ⁴⁶ *Id.* at 3; citing *In the Matter of Connect America Fund; a National Broadband Plan for Our Future; Establishing Just*
28 *and Reasonable Rates for Local Exchange Carriers; High-Cost Universal Service Support; Developing a Unified*
29 *Intercarrier Compensation Regime; Federal-State Joint Board on Universal Service; Lifeline and Link-Up; Universal*
30 *Service Reform – Mobility Fund*, WC Docket Nos. 10-90, 07-135, 05-337, and 03-109, GN Docket No. 09-51, CC Docket
31 Nos. 01-92 and 96-45, and WT Docket No. 10-208, Report and Order and Further Notice of Proposed Rulemaking, 26 FCC
32 Rcd 17663, FCC 11-161, ¶¶ 715-735 (rel. November 18, 2011) ("Order").

33 ⁴⁷ 2013 Opposition to MPSJ at 3; Lesser Affidavit at ¶ 3. NCC often does not distinguish whether it is referring to the 1997
34 ICA or the 2011 ICA. As we noted earlier, the billing procedure is spelled out in section 7.8 of the 2011 ICA.

35 ⁴⁸ Lesser Affidavit at ¶ 4. Mr. Lesser's statements about jurisdictional factors appear to relate to the 1997 ICA, as the 2011
36 ICA uses the billing procedure approved in section 7.8.

1 factors are in dispute and not subject to summary judgment.”⁴⁹

2 69. NCC argued that CenturyLink’s MPSJ does not address the hold placed on NCC’s
3 ordering ability that would have allowed NCC to order alternative services in order to eliminate MUX
4 charges.⁵⁰ NCC claims that CenturyLink misinterpreted the cost sharing provisions of the arbitrated
5 ICA and imposed excessive MUX and installation charges on NCC contrary to the terms of the
6 agreement.⁵¹ Further, NCC asserts that CenturyLink refused to install trunks to deliver CenturyLink
7 traffic, or transiting traffic to NCC, but has forced NCC to place orders for trunks, thereby unfairly
8 shifting the network installation costs to NCC. In addition, NCC asserts that CenturyLink refused to
9 comply with NCC’s directions to route all JPSA traffic bound for NCC via an alternative tandem
10 provider which would have avoided charging NCC for billing records. NCC argues that the factual
11 disputes concerning CenturyLink’s interpretation of the sections affecting MUX fees and trunk
12 installation charges preclude summary judgment.⁵²

13 70. NCC argues that CenturyLink overlooks the fact that it requires NCC to purchase the
14 Call Detail Records in order to bill carriers and to determine the reciprocal compensation owed by
15 CenturyLink because CenturyLink refuses to transmit ANI over MF. NCC argues that if CenturyLink
16 were in compliance with the federal requirements, NCC would not need the records. NCC claims that
17 CenturyLink also refuses to provide NCC with monthly summaries of call totals which would permit
18 NCC to determine the reciprocal compensation due to CenturyLink. NCC asserts that because this
19 claim hinges on a matter of fact, summary judgment is inappropriate.⁵³

20 **C. CenturyLink’s Reply to NCC’s Opposition**

21 71. CenturyLink asserts that NCC is mistaken that CenturyLink is applying “jurisdictional
22 factors” to determine local call termination minutes. In her affidavit attached to the MPSJ, Ms.
23 Albersheim states:

25 ⁴⁹ NCC 2013 Opposition to MPSJ at 3-4, *citing* Complaint at ¶¶ 30-34; Lesser Aff. at ¶ 4. NCC does not reference a specific
26 “cost sharing” provision in the 2011 ICA.

⁵⁰ NCC 2013 Opposition to MPSJ at 4. Lesser Aff. at ¶ 5.

27 ⁵¹ *E.g.*, According to NCC, Section 7.3.2.2.1 requires CenturyLink to bill 100 percent of the MUX fee to the connecting
interexchange carrier not NCC; NCC alleges that CenturyLink does not do that.

28 ⁵² NCC 2013 Opposition to MPSJ at 4-5.

⁵³ *Id.* at 5.

Under the terms of section 7.8.1 (and subsections) of the current ICA, Qwest produces a monthly report of traffic originating from sources other than Qwest, so that these minutes can be subtracted from North County's charges to Qwest for local call termination. This information is reported to NCC every month at no charge. This is largely a manual data compilation task, involving the extraction of data from another CenturyLink information system . . . which was not purpose-built for intercarrier billing. The report provides summary data regarding traffic to NCC from non-CenturyLink originating carriers. Call detail records for JPSA traffic and transit traffic, both of which originate from carriers other than CenturyLink, are necessary for North County to properly bill those other carriers.⁵⁴

72. CenturyLink claims the allegation about the illegality of "jurisdictional factors" in the context of the 2011 ICA are mystifying because NCC has not submitted a bill for local call termination since the inception of the new ICA. CenturyLink argues that Mr. Lesser's Affidavit shows that NCC is either willfully or neglectfully disregarding the monthly call summary that CenturyLink sends each month.⁵⁵ CenturyLink states that the email exchange between Mr. Lesser and Guy Duncan from CenturyLink attached to the Supplemental Affidavit of Ms. Albersheim, indicates that Mr. Lesser received the monthly reports.

73. CenturyLink states that it based its MPSJ on principles of *res judicata* and collateral estoppel, but even if contract interpretation is relevant, there are no issues of material fact that would preclude summary judgment.⁵⁶ CenturyLink states there is no ambiguity or question of fact about what the Commission considered and decided in Decision No. 72499. CenturyLink asserts that the determination of contracting parties' intent is a question of fact only if the contract is susceptible to more than one interpretation.⁵⁷

74. CenturyLink argues that the FCC's *Connect America* Order addresses signaling in the context of prevention of phantom traffic, and does not contradict, supersede, replace or prohibit the methodology the Commission approved for determining the billable local call termination minutes in the arbitration.⁵⁸ CenturyLink also argues that the *Connect America* order does not mandate that local

⁵⁴ Albersheim Affidavit at ¶13, attached to MPSJ.

⁵⁵ At para 10 of his affidavit, Mr. Lesser states "Furthermore, CTL has refused to provide NCC with monthly summaries of call totals – a task CTL can perform easily. Simple monthly call total summaries would permit NCC to determine the reciprocal compensation payment due by CenturyLink."

⁵⁶ CenturyLink Reply at 6.

⁵⁷ *Taylor v. State Farm*, 854 P.2d 1134 (1992); *Harris v Harris*, 195 Ariz. 559, 991 P.2d 262, 265 (Ariz. Ct. App. 1999) ("contracts are to be read in light of the parties' intention as reflected by their language and in view of all circumstances; if the intention of the parties is clear from such a reading, there is no ambiguity.")

⁵⁸ CenturyLink Reply at 7.

1 call termination minutes be calculated based on call information in the ANI field. Century Link argues
 2 that “[g]iven that NCC has been provided with a satisfactory way to determine local call termination
 3 minutes to CenturyLink, the FCC’s order, and indeed NCC’s obsession over MF, is irrelevant to the
 4 issues upon which CenturyLink has asked for summary judgment.”⁵⁹ In any event, CenturyLink asserts
 5 that a complaint against the ICA is not the process to address a change of law which occurs after the
 6 arbitration.⁶⁰

7 75. CenturyLink asserts that contrary to NCC’s statements, the 2011 ICA provides a billing
 8 methodology. Section 7.8 of the 2011 ICA is entitled “Billing Methodology for MF signaled Traffic
 9 Terminated to CLEC.” No pre-determined factors (“jurisdictional factors”) are applied.⁶¹

10 76. CenturyLink argues that NCC’s position that MUX costs must be shared was an issue
 11 in the arbitration and there is no basis for a re-hearing.⁶²

12 77. CenturyLink argues that NCC’s claim that CenturyLink inhibited its ability to place
 13 orders that would reduce MUX costs and placing a hold on NCC’s account (for non-payment according
 14 to CenturyLink) does not state a claim and is not sufficient to overturn the arbitration decision regarding
 15 MUX fees or state a defense to NCC’s liability for such fees.⁶³ CenturyLink asserts that by not paying
 16 its bills to CenturyLink, NCC was the author of its own predicament; furthermore, CenturyLink states
 17 the hold was lifted so that NCC could eliminate the need for multiplexing services, on August 22, 2012,
 18 but NCC never submitted any such orders.⁶⁴

19 78. Similar to MUX fees, CenturyLink asserts that NCC’s claim that circuit installation
 20 costs should be shared was an issue in the arbitration and that there is no basis to re-litigate the matter.⁶⁵
 21 CenturyLink asserts that it is well settled that if a CLEC’s request to interconnect with CenturyLink
 22 causes CenturyLink to install facilities to satisfy the request, then CenturyLink is permitted to recover

23 ⁵⁹ *Id.* at 8. CenturyLink also states that it and other carriers have pending petitions for waiver of the signaling provision of
 24 the Connect America order as it relates to passing information in the ANI field under MF signaling, for local calls.
 25 CenturyLink states that the Connect America order specifically allows for waiver requests for circumstances in which it
 would not be technically feasible to comply given the network technology deployed or where industry standards would
 permit deviation from the duty to pass signaling information unaltered.

26 ⁶⁰ Section 2.2 of the 2011 ICA addresses changes to existing laws, rules, regulations, and the interpretations thereof.

27 ⁶¹ CenturyLink states that factors were applied under the 1997 ICA.

28 ⁶² CenturyLink Reply at 9.

⁶³ *Id.* at 10.

⁶⁴ Supplemental Affidavit of Renee Albersheim in Support of Reply at ¶ 4.

⁶⁵ CenturyLink Reply at 10.

1 the cost of these facilities from the CLEC.⁶⁶

2 79. CenturyLink notes that NCC's position that it is unlawful for CenturyLink to charge for
3 Call Detail Records was raised during the arbitration (although NCC did not present testimony or
4 argument about the issue) and NCC should not be permitted to re-litigate the issue. CenturyLink argues
5 that NCC is misleading when it states that Call Detail Records are necessary to determine reciprocal
6 compensation, as Section 7.8 of the ICA permits NCC to utilize monthly call total summaries to bill
7 CenturyLink. CenturyLink notes that Call Detail Records are needed for NCC to bill other carriers for
8 JPSA traffic and transit traffic, both of which originate from carriers other than CenturyLink.⁶⁷
9 However, CenturyLink states that NCC has not asked for Call Detail Records for a number of years,
10 going back to before the effective date of the new ICA.⁶⁸

11 **D. CenturyLink's January 2017 Motion to Dismiss**

12 80. Following the Ninth Circuit's ruling that upheld the validity of the 2011 ICA,
13 CenturyLink filed its Motion to Dismiss or Exclude Certain Claims Made By Complainant. In its
14 motion, CenturyLink renewed its January 31, 2013 MPSJ and supplemented its earlier motion to argue
15 that some of NCC's reformulated claims as set forth in its December 17, 2016 Issue Matrix should be
16 dismissed.⁶⁹

17 81. NCC's Matrix Issue No. 1 claims that CenturyLink failed to pay NCC's local call
18 termination invoices since January 2005. CenturyLink claims that the record shows that NCC
19 unilaterally stopped sending invoices. NCC's Complaint states "[d]uring and subsequent to the Parties
20 negotiation, NCC ceased issuing invoices to CTL in order for the parties to determine the correct
21 formula for calculating the amounts owed by CTL."⁷⁰ CenturyLink asserts that billing is a necessary
22 prerequisite to payment of bills, and therefore the claim that CenturyLink refused to pay NCC's
23 invoices is "nonsense" as there are no invoices.

24 82. CenturyLink argues there is no support for the claim that "the Parties [must] determine

25 ⁶⁶ *Id.* at 11; Decision No. 72477, ¶102.

26 ⁶⁷ According to CenturyLink, the calling information in the ANI field would not provide sufficient information for NCC to
27 bill for JPSA traffic because such access charges are billable to the IXC and not the LEC that may be associated with the
28 caller information. CenturyLink Reply at 12.

⁶⁸ Affidavit of Renee Albersheim ¶13, Affidavit Attachment to Motion for Partial Summary Judgment ¶¶9-10.

⁶⁹ January 18, 2017 Motion to Dismiss ("Motion to Dismiss") at 2.

⁷⁰ Complaint at ¶25.

the correct formula for calculating the amounts owed by CTL.”⁷¹ First, according to CenturyLink, the 1997 ICA that NCC opted into is the same form of ICA under which CenturyLink exchanged traffic with dozens of other CLECs without the kinds of disputes raised by NCC, and that the 1997 ICA provides the basis for proper calculation of local traffic termination, which NCC acknowledges in its Complaint when it stated: “[t]he Agreement also sets forth the terms, condition and prices under which the parties agree to provide interconnection and reciprocal compensation for the exchange of local traffic”⁷² CenturyLink argues that NCC’s allegation that CenturyLink applied inappropriate “factors” to its remittances in response to NCC’s billings, demonstrates that NCC could have billed CenturyLink.⁷³ In addition, CenturyLink argues that the federal courts upheld the 2011 ICA as lawfully arbitrated, and the Commission approved provisions in the 2011 ICA that allowed NCC to continue to use MF signaling, and approved a methodology for calculating the bills for terminated traffic.⁷⁴ Thus, CenturyLink argues that NCC’s request for relief for the establishment of a formula must be denied because it was decided by Decision No. 72499, a final Order of the Commission.

83. CenturyLink states that in its Complaint, and continuing through today, NCC has never provided the amounts it seeks from CenturyLink. CenturyLink notes that this is in direct contravention of the October 7, 2016 Procedural Order that directed the parties to file an Issues Matrix that identifies the amounts alleged to be owed. CenturyLink argues that NCC’s Issues Matrix filed December 16, 2016 is an inadequate submission, and NCC’s claim should be dismissed for failure to prosecute.⁷⁵

84. CenturyLink asserts that the two year statute of limitations found in Section 415(a) of the Communications Act of 1934, as amended, prevents any charges incurred prior to August 16, 2010.⁷⁶ CenturyLink argues that the claim for alleged charges from before August 16, 2010 are not saved from the operation of the federal statute of limitations by reason of the Tolling Agreement entered into between the parties on July 27, 2010, because NCC did not bill CenturyLink at all since the month of July 2008, and it cannot be contended that the Tolling Agreement preserved claims for amounts not

⁷¹ Motion to Dismiss at 2.

⁷² Complaint at ¶20.

⁷³ Motion to Dismiss at 2.

⁷⁴ *Id.* at 3; 2011 ICA at Section 7.10.

⁷⁵ Motion to Dismiss at 4.

⁷⁶ *Id.*

1 billed at all, but which could have been billed. CenturyLink argues that NCC has essentially forgone
 2 its contractual rights, to the point where it would now work an injustice to enforce them.⁷⁷ CenturyLink
 3 asserts that by not billing, NCC has deprived CenturyLink the ability to review and audit the
 4 information.

5 85. CenturyLink argues that NCC's Matrix Issue 3 regarding the transmission of the ANI
 6 should be dismissed because the Commission answered this precise issue in Decision No. 72499.⁷⁸

7 86. CenturyLink argues that NCC's Matrix Issue 4 (relating to the imposition of MUX
 8 charges) and No. 11 (MUX charges violate the Telecom Act by charging for the cost of delivery
 9 CenturyLink's own traffic to NCC) should be dismissed because the 1997 ICA, Section IV.C.2.d
 10 clearly provides for multiplexing charges and Decision No. 72499 upheld MUX charges in the 2011
 11 ICA, citing a long history of Commission approval of MUX charges.⁷⁹ CenturyLink asserts that NCC
 12 never challenged the 1997 ICA and Decision No. 72499 is final.

13 87. CenturyLink argues that NCC's Matrix Issue 5 (installation charges for circuits to
 14 interconnect the parties' networks were not set forth in the 1997 ICA and are unlawful) should be
 15 dismissed because the 1997 ICA, Section IV, V and Appendix A, and Section 7 and Exhibit A of the
 16 arbitrated ICA provide for circuit installation charges. CenturyLink adds that the propriety and legality
 17 of charging for installation of trunks and MUXs was resolved in Decision No. 72499.⁸⁰

18 88. CenturyLink argues that NCC's Matrix Issues 6 and 8 (charges for call detail records
 19 are contrary to the 1997 ICA and unlawful) should be dismissed because NCC signed the Transit
 20 Record Amendment which specifically provides in Section 7.6.3 for billing for call records, and the
 21 2011 ICA specifically authorized the charges in Section 7.10.1 of the Exhibit A.⁸¹ CenturyLink asserts
 22 that NCC never challenged the 1997 ICA and as noted by the Ninth Circuit Court of Appeals, NCC did
 23 not raise the Call Detail Record issue in the arbitration of the 2011 ICA.

24 89. CenturyLink argues that when NCC voluntarily opted into the 1997 ICA and when the
 25 2011 ICA was upheld by the Ninth Circuit Court of Appeals, those agreements became binding

26 ⁷⁷ *Id.* at 5.

27 ⁷⁸ *Id.*

⁷⁹ *Id.* at 6, Decision No. 72499 at ¶¶ 113-118.

⁸⁰ Motion to Dismiss at 6.

28 ⁸¹ *Motion to Dismiss at 6; Albersheim Affidavit.*

contracts and NCC must live by their terms.⁸²

E. NCC's Response⁸³ to CenturyLink's Motion to Dismiss

90. NCC opposed CenturyLink's request to Dismiss NCC's Complaint and requested that the Commission establish a briefing schedule for motions. NCC opined that there is no need for a hearing in this case, and proposed that the parties engage in a Commission-led one-day mediation prior to the filing of motions.⁸⁴

91. NCC asserts that it did not unilaterally stop sending invoices to CenturyLink, but that "by way of tolling and other agreements," the parties agreed that NCC would not bill CenturyLink until they "established an accurate billing formula."⁸⁵ NCC states that CenturyLink misled the Commission and NCC about the scope of rural ILECs, and that fraudulent behavior "via the 1997 ICA opted into by NCC does not prohibit NCC from exposing that fraud and seeking appropriate compensation."⁸⁶

92. NCC states that it is not seeking to readdress the 2011 ICA, and is "quite aware that the 2011 ICA is set in stone at this point."⁸⁷

93. NCC asserts that its Issue Matrix did not specify dollar amounts for its claims because exact amounts were not known at the time because an accurate formula for compensation has not established, and the claims based on alleged unlawful and anticompetitive behaviors are non-quantifiable. NCC alleges that the calculation of damages will be hindered by the fact that CenturyLink has destroyed the records that relate to NCC's claimed losses and damages for unpaid invoices.⁸⁸

F. NCC's Updated Response to CenturyLink's MPSJ and Motion to Dismiss⁸⁹

94. NCC states that it stands by its original response (except for the request to stay the issue pending the appeal) and its updated Issue Matrix.

95. NCC argues that Decision No. 72499 did not address CenturyLink's obligation under

⁸² See *North County Communications Corp of Arizona v. Qwest Corporation*, 824 F.3d 830, 839 (9th Cir. 2016) ("As we have explained, '[o]nce the terms[of an ICA] are set, either by agreement or arbitration, and the state commission approves the agreement, it becomes a binding contract.'")

⁸³ Filed March 6, 2017.

⁸⁴ NCC Response to Motion to Dismiss.

⁸⁵ *Id.* at 2.

⁸⁶ *Id.*

⁸⁷ *Id.*

⁸⁸ *Id.*

⁸⁹ Filed on June 1, 2017 in response to Procedural Order dated May 17, 2017.

1 the 1997 ICA to provide ANI over MF, and the Commission has not interpreted the language of the
2 1997 ICA with respect to signaling issues, and thus the 1997 ICA is not subject to summary judgment.
3 In addition, NCC asserts that the 2011 ICA includes a provision to comply with all FCC orders, and
4 that it is NCC's understanding that the FCC has not granted the waiver that CenturyLink has requested.

5 96. NCC states that CenturyLink is asking for a credit for prior bills by NCC under the 1997
6 ICA. NCC states that it is owed a refund of over-billed amounts due to CenturyLink's fraudulent
7 jurisdictional factors used to determine the traffic that originated with CenturyLink. NCC claims that
8 CenturyLink no longer has the records to support its claims.⁹⁰

9 97. NCC disputes that NCC unilaterally stopped sending bills, and asserts that CenturyLink
10 agreed that all billing would cease until the jurisdictional factor was agreed to by the parties or ruled
11 on by the Commission. Because the Commission has never ruled on this issues, it is not subject to
12 summary judgment

13 98. NCC also disputes that it stopped asking for records under the 1997 ICA, which is an
14 issue of fact that prevents summary judgment.⁹¹

15 99. NCC asserts that it has not received any of the monthly summary reports required and
16 necessary for NCC to do the billing under Section 7.8.1 of the agreement, and claims to be perplexed
17 that CenturyLink could provide this report under the 2011 ICA, but not under the 1997 ICA. NCC also
18 questions the rationale for limiting the number of minutes NCC can bill per T1 if the reports are
19 accurate. NCC argues there are too many facts in dispute for this issue to be decided on summary
20 judgment.⁹²

21 100. With respect to MUX fees, NCC asserts that part of the amounts being claimed by
22 CenturyLink are owned under the 1997 ICA, which has never been interpreted by the Commission.
23 NCC claims that the parties agreed that neither party would charge a MUX fee for circuits that were
24 used solely for transmission of traffic between the parties, and that MUX fees would only apply for
25 DS1s being used as an Unbundled Network Element ("UNE"). Thus, NCC states that there are facts in

26
27 ⁹⁰ NCC Response at 2, Lesser Declaration at ¶ 4.

⁹¹ *Id.* at 2-3.

28 ⁹² *Id.* at 3; and Lesser Declaration at ¶ 6. The limit on minutes able to be billed is related to an issue raised in the 2011 arbitration.

dispute under the 1997 ICA that prevent summary judgment.⁹³ NCC claims that the agreement concerning MUXs applies to the 2011 ICA as well.

101. NCC claims the MUXs were “requested” by CenturyLink as a cost savings to them since it is cheaper to provide one DS3 instead of 24 DS1s.⁹⁴ In addition, NCC claims that billing NCC and the IXC and CLECs an additional per minute tandem switching MUX fee would be double billing for MUX fees.⁹⁵ NCC argues the issues of fact preclude summary judgment.

102. NCC states that no circuits were installed under the 2011 ICA; and all circuits were installed under the 1997 ICA which was not the subject of Decision No. 72499. Thus, any charges for circuits would not be subject to summary judgment. Similarly, NCC argues the subject of charges for billing records under the 1997 ICA was not addressed by the Commission in Decision No. 72499.⁹⁶

103. With respect to the issue of charges for billing records under the 2011 ICA, NCC states that “[w]hile the Commission Decision 72499 addressed CenturyLink providing NCC with summary reports, NCC needs the backup data to validate the accuracy of the reports every month. CenturyLink supposedly used those records to create the summary report, it make [sic] no sense for CenturyLink to charge for the data file that AT&T, Verizon and Frontier provide for free every month.”⁹⁷

104. NCC also reiterates its request that the Commission order the parties to participate in a mediation led by the Commission’s technical staff. NCC claims that CenturyLink has put NCC virtually out of business by blocking all its traffic to NCC, and that forcing NCC to participate in a hearing would force NCC into bankruptcy.⁹⁸

G. CenturyLink’s Reply

105. CenturyLink asserts that the legality of CenturyLink’s practices relating to the signaling system and whether ANI is provided are separate from the parties’ respective billing claims. CenturyLink argues that the Commission should exclude from further litigation the validity of CenturyLink’s practices regarding MF signaling and the provision of ANI, as those issues have been

⁹³ *Id.* at 3; Lesser Declaration at ¶7.

⁹⁴ NCC Response at 3.

⁹⁵ *Id.* at 3; Lesser Declaration at ¶8.

⁹⁶ *Id.* at 4.

⁹⁷ *Id.*; Lesser Declaration at ¶

⁹⁸ *Id.*

1 decided. CenturyLink argues that the remaining monetary determinations must be made on the contract
 2 as it was conducted at the time.⁹⁹ CenturyLink argues that the legality of CenturyLink's position on
 3 signaling and ANI, and NCC's opposition thereto were the prime focus of the arbitration, and the
 4 arbitration decision was based on facts in existence under the 1997 agreement. Thus, CenturyLink
 5 argues NCC's claims regarding the use of MF signaling and provision of ANI, under either the 1997
 6 ICA or 2011 ICA, should be dismissed summarily under the doctrines of collateral estoppel and *res*
 7 *judicata*.

8 106. CenturyLink reiterates that the *Connect America* Order does not contradict, supersede,
 9 replace or prohibit the methodology the Commission approved in the arbitration for determining call
 10 termination minutes. CenturyLink argues that because NCC has been provided a satisfactory way to
 11 determine local call termination minutes to CenturyLink, the FCC's order, and ANI is irrelevant to
 12 resolution of the past period billing claims.¹⁰⁰

13 107. CenturyLink states that there has never been a time when NCC was prevented from
 14 submitting invoices to CenturyLink, but that NCC has not done so since July 2008, even after the 2011
 15 ICA explicitly formalized the calculation. CenturyLink asserts that even after the Commission asked
 16 the parties to state the amount of its claims against CenturyLink, NCC failed to do so, which
 17 CenturyLink states is an "egregious failure to prosecute its claims."¹⁰¹

18 108. CenturyLink asserts that Mr. Lesser's statements acknowledge that following approval
 19 of the 2011 ICA, NCC received the monthly summary reports from CenturyLink.¹⁰² CenturyLink
 20 argues that because NCC has offered no other excuse for its failure to bill under the 2011 ICA, judgment
 21 should be rendered in CenturyLink's favor on that point, with NCC's unliquidated claim for traffic
 22 termination charges being dismissed.¹⁰³

23 109. CenturyLink states that NCC has not offered documentation or corroborating evidence
 24 to support Mr. Lesser's claims that with respect to the 1997 ICA that the parties "agreed that NCC
 25

26 ⁹⁹ CenturyLink June 14, 2017 Reply ("Reply") at 2.

¹⁰⁰ Reply at 3.

¹⁰¹ Reply at 3.

¹⁰² Albersheim Affidavit in Support of MPSJ at ¶13 stated that the reports have been sent monthly. Lesser Affidavit at ¶6
 27 avers "NCC has not received any summary reports until the 2011 ICA." (emphasis added). Reply at 3.

¹⁰³ Reply at 3.

1 would not issue another bill under [sic] an appropriate formula was determined to deal with the
2 subtending rural ILEC traffic.”¹⁰⁴ CenturyLink states that it disputes the claim and submits that the
3 threshold issue is whether such an agreement was made, and if after a hearing it is determined that no
4 such agreement was, made, NCC’s unliquidated claim must be dismissed. With respect to NCC’s
5 claims for refund of overcharges during the 1997 ICA, CenturyLink states that it did not include this
6 claim in its MPSJ.¹⁰⁵

7 110. CenturyLink asserts that NCC’s argument that the Commission never interpreted the
8 1997 ICA in connection with the legality of MUX charges misses the mark because after NCC
9 voluntarily adopted the 1997 ICA, it cannot complain years later about the terms it consented to.
10 Further, CenturyLink asserts that charges for MUXs are legal, and were clearly a focus of NCC’s case
11 during the arbitration. CenturyLink states that after fully hearing the issue, the arbitration decision
12 carried forward the MUX charge provisions of the 1997 ICA. Therefore, CenturyLink argues that the
13 incidence and application of MUX charges, whether in the context of the 1997 ICA or the 2011 ICA,
14 should be summarily dismissed under doctrines of collateral estoppel and *res judicata*.¹⁰⁶

15 111. CenturyLink argues that NCC did not provide documentation or corroborating evidence
16 to support its claim that the parties agreed that neither would charge a MUX fee for circuits used solely
17 for the transmission of traffic between them.¹⁰⁷ CenturyLink disputes such agreement, and asserts that
18 an allegation such as that made in defense of an issue that has been subject to years of litigation should
19 not be allowed.

20 112. With respect to circuit installation fees in the context of the 1997 ICA, CenturyLink
21 notes that NCC voluntarily adopted the 1997 ICA and argues that it cannot now disclaim obligations
22 for which it willingly consented. CenturyLink argues the legality of circuit installation charges was
23 litigated both as a conceptual matter and in the context of the NCC business during the arbitration.

24 113. CenturyLink notes that NCC tries to challenge the legitimacy of charging for billing
25 records under the 1997 ICA by noting that the arbitration did not address that issue, but does not
26

27 ¹⁰⁴ *Id.* at 4. See Lesser Affidavit at ¶ 5.

28 ¹⁰⁵ *Id.*

¹⁰⁶ *Id.*

¹⁰⁷ *Id.*

1 respond to CenturyLink's verified statement that NCC signed the Transit Record Amendment which
 2 specifically provides in Section 7.6.3 for billing for call records.¹⁰⁸ CenturyLink argues that NCC's
 3 consent forecloses its subsequent challenge to charges for the call records.

4 **H. NCC's Motion for Summary Judgment**

5 114. NCC's Motion for Partial Summary Judgment provides as follows:

6 Centurylink has submitted a billing dispute to this Commission for past
 7 billings of NCC of AZ. Centurylink has now admitted that they destroyed all
 8 the documents and possess nothing to support this claim. NCC of Arizona
 respectfully requests that [sic] Commission dismiss this action.

9 **I. CenturyLink Response to NCC Motion for Partial Summary Judgment.**

10 115. CenturyLink opposes NCC's Motion for Partial Summary Judgment on the following
 11 grounds:

12 (a) The Motion was filed on May 15, 2017, which was past the last day for such motions
 13 of May 14, 2017, as set by the May 17, 2017 Procedural Order. CenturyLink argues that in light of
 14 NCC's history of inattention to the procedural requirements of the Commission, this failure to act
 15 timely should not be indulged by forgiveness.¹⁰⁹

16 (b) The Motion does not identify the issues it addressed with sufficient specificity to
 17 allow CenturyLink or the Commission to evaluate it, and it does not refer to the issue matrix item that
 18 are impacted despite the request of the May 17, 2017 Procedural Order.

19 (c) The Motion claims CenturyLink made an admission, but does not identify when and
 20 where the alleged admission was made and it does not include a statement of facts as required by Ariz.
 21 Rule Civ. Proc. 56 (3)(C)(a), and is therefore deficient.

22 (d) CenturyLink disputes the allegation that it has destroyed records necessary to
 23 support its counterclaims and defenses, and retains the necessary documents to prove its defenses and
 24 counterclaims. If the Motion is not disallowed for deficiency, it cannot be granted because CenturyLink
 25 disputes NCC's averment.¹¹⁰

27 ¹⁰⁸ Reply at 5; Albersheim Affidavit in Support of MPSJ.

28 ¹⁰⁹ CenturyLink Opposition at 1.

¹¹⁰ CenturyLink Opposition at 2.

1 **III. Analysis and Resolution**

2 **A. CenturyLink MPSJ and Motion to Dismiss**

3 **1. CenturyLink Matrix Issues 3 through 7 (unpaid CenturyLink invoices)**

4 116. In March 2011, the Commission arbitrated a new interconnection agreement between
5 CenturyLink and NCC and in July 2011, issued Decision No. 72499 which resolved the issues
6 presented by the parties. On August 24, 2011, as a compliance filing to the Arbitration Order,
7 CenturyLink filed the 2011 ICA which accurately included the provisions that the Commission
8 arbitrated. At that time, CenturyLink indicated that NCC had not executed the agreement. The 2011
9 ICA was approved as a matter of law under the terms of A.A.C. R14-2-1506 and 1507. NCC did not
10 seek re-hearing of the Arbitration Order, but challenged the validity of the 2011 Arbitration Order in
11 Federal Court. Ultimately, the Federal District Court and Ninth Circuit Court of Appeals upheld the
12 validity of the 2011 ICA. Thus, Decision No. 72499 is a final Order of the Commission, and the 2011
13 ICA replaces any earlier agreement, and controlled the parties' rights and responsibilities.

14 117. In Decision No. 72499, the Commission approved contract language that established a
15 billing methodology for determining how NCC can bill CenturyLink for local call terminations under
16 MF signaling, and rejected NCC's proposal that CenturyLink must provide call detail information in
17 the ANI field.¹¹¹ The Commission also approved contract language that allows CenturyLink to charge
18 NCC for LIS trunk installations and for MUXs.¹¹² The Commission did not specifically approve
19 language that allows CenturyLink to charge for Call Detail Records because it was not argued during
20 the arbitration, but the final 2011 ICA included CenturyLink's proposed language on this point.¹¹³

21 118. These same parties in this Complaint proceeding participated in the 2011 arbitration
22 proceeding. NCC cannot challenge the terms of the 2011 ICA. The doctrines of *res judicata* and
23 collateral estoppel prevent such attacks on a Commission Order in order to promote certainty and
24 judicial economy. Even NCC recognizes that it cannot challenge the terms of the 2011 ICA, as NCC

25 ¹¹¹ Decision No. 72499 at 7-16.

26 ¹¹² *Id.* at 23-26. Section 7.3.3 allows charges for circuits, Section 7.3.2.3 allows charges for MUXs, Section 7.6.3 allows
charges for transit traffic Call Detail Records, and Section 7.5.4 allows charges for Call Detail Records for JPSA traffic.

27 ¹¹³ Decision No. 72499 at 6, fn 8. *See* 2011 ICA at Sections 7.5 and 7.6. Neither the District Court nor the Ninth Circuit
28 allowed NCC to argue that Section 7.6 of the 2011 ICA was contrary to law because NCC had not raised the issue before
the Commission in the arbitration. 824 F.3d at 844; U.S. Dist. Ct Order in CV-13-00466-PHX-DGC at 12 (attached to
March 13, 2013 Status Update filed in this proceeding).

1 has admitted that the 2011 ICA is “set in stone.”¹¹⁴

2 119. NCC opted into the 1997 ICA, which was a pre-existing ICA between CenturyLink and
3 other CLECs, and was not arbitrated by the Commission. NCC argues that unlike the 2011 ICA, the
4 Commission has not explicitly ruled on whether Qwest’s charges for circuits, MUXs and Call Detail
5 Records pursuant to the 1997 ICA are permitted by law, and that the 1997 ICA does not contain
6 provisions that permits charges for MUXs or call detail records.

7 120. CenturyLink refers to various sections of the 1997 ICA which it states provides for these
8 charges.¹¹⁵ The copy of the 1997 ICA that was attached as Exhibit C to the Complaint does not contain
9 a provision that specifically references charging for Call Detail Records, although the unrefuted
10 statement of Ms. Albersheim is that NCC entered into an amendment to the 1997 ICA in 2002 that
11 specifically provided for charges for the Call Detail Records.¹¹⁶ However, the 2002 amendment to the
12 1997 ICA is not part of the record of this proceeding.

13 121. The Commission found in Decision No. 72499 that charges for circuits and MUXs are
14 permissible.¹¹⁷ The charges for Call Detail Records were part of the final Order that was approved as a
15 matter of law. The Commission made the findings set out in the 2011 Arbitration Order based on the
16 facts and law as they existed at the time when the 1997 ICA was still in operation. Collateral estoppel
17 or issue preclusion prevents a party from re-litigating an issue of fact or law when that party had the
18 opportunity to litigate the same issue in a prior case. NCC and CenturyLink argued whether charges
19 for circuits and MUXs were legal in the arbitration proceeding, and NCC could have argued the validity
20 of charges for Call Detail Records. The Commission settled these issues in Decision No. 72499, and
21 we will not re-litigate the legality of these charges under the 1997 ICA in the forthcoming hearing.

22 ¹¹⁴ NCC Response to Motion to Dismiss at 2.

23 ¹¹⁵ CenturyLink refers to Section VI and Appendix A of the 1997 as permitting Qwest to charge for its costs of
24 interconnecting with NCC. The 1997 ICA provides that Interconnection may be accomplished through the provision of an
25 entrance facility. The rates for entrance facilities are provided in Appendix A to the 1997 ICA. Section VI.G of the 1997
26 ICA provides for the provision of Entrance Facilities and Trunking Requirements, and provides that Trunk groups
27 connections will be made at a DS1 or multiple DS1 level. Appendix A provides the charges Entrance Facilities and Direct
28 Trunk Transport and Multiplexing from DS3 to DS1. The 1997 ICA at Section V.D.2.e provides for multiplexing options
at the rates specified in Appendix A. Ms. Albersheim states in her affidavit in support of the MPSJ at para. 6 that Section
IV.C.2.d and e of the old ICA (presumably the 1997 ICA) allowed multiplexing and the rates were established in the Exhibit
A to that agreement. However, the copy of the 1997 ICA attached to the Complaint does not have a section IV.C.2.d and
e, and this appears to be a typo.

¹¹⁶ See Albersheim Affidavit in Support of MPSJ at ¶ 9.

¹¹⁷ Decision No. 72499 at 24-26.

122. NCC argues that the FCC's *Connect America* Order requires CenturyLink to provide ANI over MF, thus eliminating the need for NCC to request and pay for Call Detail Records. NCC appears to want the Commission to reverse its decision in the Arbitration Order and require CenturyLink to provide the Call Details in the ANI field.

123. The FCC's Order at ¶¶ 715 and 716 provides:

715. *Multi-Frequency (MF) Automatic Number Identification (ANI)*. As noted in the *USF/ICC Transformation NPRM*, some service providers do not use SS7 signaling, but instead rely on Multi-Frequency (MF) signaling. The *USF/ICC Transformation NPRM* proposed that service providers using MF Signaling pass the CPN, or the CN if different, in the MF Automatic Number Identification (MF ANI) field.

716. We amend our rules to require service providers using MF signaling to pass the number of the calling party (or CN, if different) in the MF ANI field. This requirement will provide consistent treatment across signaling systems and will ensure that information identifying the calling party is included in call signaling information for all calls. Moreover, this requirement responds to the concerns expressed in the record that MF signaling can be used by "unscrupulous providers" to engage in phantom traffic practices. The previous record concerning the technical limitations of MF ANI appears to be mixed. In balancing the need for a rule that covers all traffic with the technical limitations asserted in the record, we conclude that the approach most consistent with our policy objection is not to exclude the entire category of MF traffic. Such a categorical exclusion could create a disincentive to invest in IP technologies and invite additional opportunities for arbitrage. Although our rules will apply to carriers that use or pass MF signaling, we do not mandate any specific method of compliance. Carriers will have flexibility to devise their own means to pass this information in their MF signaling. Nevertheless, to the extent that a party is unable to comply with our rule as a result of technical limitations related to MF signaling in its network, it can seek a waiver for good cause shown, pursuant to section 1.3 of the Commission's rules. (footnotes omitted).

124. The 2011 ICA was arbitrated in 2011 with Decision No. 72499 issued on July 25, 2011, prior to the FCC's release of the *Connect America* Decision on November 11, 2011. The portion of the FCC's Order that addresses providing ANI over MF Signaling was in the context of a discussion on phantom traffic. CenturyLink disputes that the provision requires the provision of ANI for the purpose of determining minutes of use for billing purposes. The FCC provides carriers with flexibility in how they comply and allows carriers to seek a waiver. CenturyLink has requested a waiver. Mr. Lesser states that it is his understanding that no waiver has been granted, and he concludes that CenturyLink

1 is in violation of the FCC's Order.¹¹⁸ Because CenturyLink has not updated the record, we assume that
2 a waiver has not yet been granted.

3 125. Although we understand that NCC does not believe it should pay for Call Detail Records
4 based on the FCC's Order, NCC has not refuted CenturyLink's averment that NCC has taken no action
5 under the provisions of the 2011 ICA to amend the agreement. Even after the Federal courts upheld the
6 validity of the 2011 ICA, NCC did not seek amendment of the 2011 agreement concerning the ANI
7 issue.

8 126. We do not make any findings herein on the scope of the FCC's *Connect America* order,
9 and have not been asked to. We are interpreting the terms of the contract between the parties as it
10 stands. NCC has ignored the change of law provision in the 2011 ICA and has not followed the process
11 set forth Section 2.2 of the 2011 ICA to amend the agreement.¹¹⁹ The 2011 ICA as submitted is the
12 contract governing the parties' obligations, and NCC must abide by its terms, or seek its amendment.¹²⁰

13 127. NCC had the opportunity to argue that CenturyLink should not be allowed to charge for
14 Call Detail Records in the 2011 arbitration, but it opted to drop the issue. The issue is settled because
15 the 2011 ICA is a valid contract. The issue of ANI over MF Signaling was not before the FCC at the
16 time the 1997 ICA was negotiated or when NCC opted into the agreement. The issue of whether charges
17 for Call Detail Records are permissible under the 1997 agreement depends on the terms of that
18 agreement. CenturyLink states there is an amendment to the 1997 agreement that specifically addresses
19 Call Detail Records. NCC does not refute the claim, however the best evidence of the amendment is
20 the document itself. Thus, while we will not hear argument on the validity of charges for Call Detail
21 Records under the 1997, we will take evidence on whether the 1997 agreement allows for such charges.

22 128. CenturyLink provided evidence in the form of the affidavit of Ms. Albersheim and
23 related exhibits which indicate that NCC has not paid CenturyLink for MUX charges on its LIS trunks
24 since December 2010;¹²¹ and that NCC ordered Call Detail Records for transit traffic and JPSA traffic,

25
26 ¹¹⁸ May 31, 2017 Lesser Affidavit at ¶ 3.

27 ¹¹⁹ Section 2.2 provides that if federal or state law changes, the parties have 60 days after notification from a party seeking
an amendment to come to agreement, after which if no agreement on an amendment is reached, the dispute will be resolved
in accordance with the dispute resolution provision of the agreement.

28 ¹²⁰ In any event, NCC does not appear to have requested Call Detail Records under the 2011 ICA.

¹²¹ Albersheim Affidavit at ¶ 7.

1 but has not paid CenturyLink invoices since December 2008.¹²² In March and May 2012, CenturyLink
 2 sent NCC notices regarding past due payments, and a notice of disconnection in July 2012. NCC has
 3 not provided a written dispute of charges as outlined in Section 5.4.4 of the 2011 ICA, and thus, has
 4 not disputed CenturyLink's charges for MUX or Call Detail Records for purposed of billing disputes
 5 under the contract.¹²³ Ms. Albersheim states that every month CenturyLink prepared a monthly report
 6 of traffic originations so that NCC can determine what to charge CenturyLink for local call
 7 termination.¹²⁴ NCC acknowledges that CenturyLink sent monthly summaries under the 2011 ICA.

8 129. NCC claims, however, that while operating under the 1997 ICA, the parties had an
 9 agreement not to charge each other for MUXs. It is not clear if NCC intends this claim to justify its
 10 failure to pay invoices that originated under the 2011 ICA. In any case, it strains credulity and
 11 reasonableness to believe that such an agreement would continue absent written memorialization, and
 12 after the contentious litigation efforts in the arbitration. If there was such an agreement affecting the
 13 1997 ICA, it is an issue for hearing.

14 130. NCC argues that it should be allowed to offset its own MUX charges against
 15 CenturyLink's MUX charges, however, there is no evidence that NCC invoiced CenturyLink for
 16 MUXs, or that the contract contained a provision for NCC to charge for MUXs, or that it contains a
 17 provision that would allow offset. Whether such provision is part of either agreement or part of another
 18 agreement, is also an issue for hearing.

19 131. NCC alleges that CenturyLink blocked its ability to order circuits, and required the
 20 installation of DS3 circuits which has resulted in MUX charges that could have been avoided.¹²⁵
 21 CenturyLink disputes it acted improperly.¹²⁶ While the matter of the legality of charges for circuits,

22 ¹²² *Id.* at ¶9.

23 ¹²³ *Id.* at ¶¶11 and 12.

24 ¹²⁴ *Id.* at ¶14. CenturyLink provided a copy of an email sent to Mr. Lesser that transmits the monthly summary report for
 April and May, 2012, and June and July 2012. Albersheim Supplemental Affidavit at Attachments 4 and 5. (Confidential)
¹²⁵ Lesser March 2013 Affidavit.

25 ¹²⁶ Ms. Albersheim states that the ability to order any product or service is contingent in part on the CLEC's account being
 in good standing, as Section 5.4.2 of the 2011 ICA provides that "[o]ne party may discontinue processing orders for the
 26 failure of the other Party to make full payment for the services, less any good faith disputed amount as provided for in
 Section 5.4.4 of this Agreement."¹²⁶ CenturyLink acknowledges that it discontinued processing NCC's orders in April 2012,
 27 but agreed to allow NCC to submit orders beginning July 16, 2012. Ms. Albersheim states that the CenturyLink reinstated
 NCC's ordering capability in order to give NCC the ability to avoid MUX charges, and that NCC has had the ability to
 28 order alternate services since CenturyLink sent instructions on the process to convert NCC's trunks to eliminate the need
 for multiplexing on August 22, 2012.

1 MUXs and Call Detail Records is settled under either agreement, there is a question of fact on the
2 parties' conduct pursuant to those provisions. Thus, allegations of improper conduct under either
3 contract will be considered in the hearing.

4 132. In addition to issues of the parties' conduct under the agreements, the record needs to
5 be augmented concerning the amounts contained in CenturyLink's invoices. At the hearing,
6 CenturyLink will need to provide an accounting of the charges, including the dates of the service and
7 invoice, and a description of the contract provision under which the charges were incurred.

8 133. CenturyLink seeks interest on the unpaid amounts due. In its Issue Matrix it states that
9 the rate and amount will be shown at hearing. To the extent CenturyLink seeks interest on any past due
10 amounts, at the hearing CenturyLink should provide a calculation of the amount and cite to the
11 provisions of the 2011 ICA and/or law that allows such charges and rate.

12 134. CenturyLink raised the defense that the statute of limitations contained in 47 U.S.C. §
13 415(a) prevents any of NCC's claims arising prior to August 10, 2010.¹²⁷ There are issues of fact
14 concerning an alleged tolling agreement during the term of the 1997 ICA that prevents our
15 determination that the statute of limitations would preclude claims older than two years prior to the
16 filing of the Complaint.

17 135. We grant that portion of CenturyLink's MPSJ to the extent we find that NCC cannot in
18 this Complaint re-litigate the legality of charges for circuits, MUXs and Call Detail Records. Issues of
19 material fact prevent a complete finding in favor of CenturyLink. Issues to be determined at the hearing
20 related CenturyLink's unpaid invoices include what services are included in the invoices and when
21 they were incurred; whether there was an agreement under the 1997 ICA that the parties would not
22 charge each other for certain products or services; specific terms of the 1997 agreement concerning
23 charges for circuits and Call Detail Records; whether CenturyLink improperly disconnected NCC
24 circuits or improperly required DS3 circuits; and the applicability of any statutes of limitation.

25 ...

26 ...

27

28 ¹²⁷ NCC filed its Complaint on August 16, 2012.

1 B. **CenturyLink Motion to Dismiss**

2 1. **NCC Matrix Issue 3** (ANI over MF)

3 136. NCC alleges that CenturyLink refused to transmit ANI over MF which led to NCC
4 under-billing under the 1997 ICA.

5 137. CenturyLink asserts that this issue should be dismissed because the Commission
6 answered this issue in favor of CenturyLink in Decision No. 72499.¹²⁸ CenturyLink notes that the 2011
7 ICA was upheld by the Federal courts, and because the Commission's Decision No. 72499 is final,
8 NCC's factual allegations relating to ANI should be excluded.

9 138. The Commission addressed this issue in the arbitration of the 2011 ICA, and NCC
10 cannot challenge a final order of the Commission. As we discussed above, under the terms of their
11 2011 contract, NCC must utilize the change of law provision and dispute resolution process as
12 established in the 2011 ICA in order to determine if the *Connect America* Order requires a change to
13 the 2011 ICA.

14 139. NCC was using MF Signaling without call details in the ANI field for years under the
15 1997 ICA. NCC cannot at this late date challenge the terms of the 1997 agreement. In any case, the
16 1997 ICA terminated with the approval of the 2011 ICA, well before the FCC's *Connect America* Order
17 was issued. NCC's claim that CenturyLink should have provided ANI over MF under the 1997 ICA is
18 unrelated to the billing dispute between the parties under that contract.

19 140. Thus, we grant CenturyLink's Motion to Dismiss NCC Issue 3. This does not impact
20 NCC's claim that CenturyLink used improper factors to determine the volume of local traffic subject
21 of the termination charges (i.e. NCC's Matrix Issue 2).

22 2. **NCC Matrix Issue 4** (1997 ICA does not allow for MUX charges)
23 **NCC Matrix Issue 11** (MUX charges violate the Telecom Act)

24 141. NCC argues that there is no provision for charging for MUXs in the 1997 ICA, and also
25 that the parties agreed not to charge each other for MUXs.¹²⁹

26 142. CenturyLink argues that NCC has never before raised the claim that the parties agreed

27 _____
28 ¹²⁸ CenturyLink Motion to Dismiss at 5, citing Decision No. 72499 at ¶¶ 67-68; and Reply at 1-2.

¹²⁹ May 31, 2017 Lesser Affidavit at ¶ 7.

not to bill for MUXs and has not provided evidence in support of its allegation. CenturyLink argues that NCC's Matrix issues 4 and 11 should be dismissed because the 1997 ICA, Section IV.C.2.d clearly provides for multiplexing charges and Decision No. 72499 upheld MUX charges in the 2011 ICA, citing a long history of Commission approval of MUX charges.¹³⁰ CenturyLink asserts that NCC never challenged the 1997 ICA and Decision No. 72499 is final.

143. We have previously held in Decision No. 72499 that CenturyLink's MUX charges are legal. Pursuant to the doctrines of *res judicata* and claim preclusion NCC cannot now re-litigate the finding that MUX charges are legal under either the 2011 or 1997 ICAs. The issue of whether the parties agreed not to impose MUX charges under the 1997 ICA is an issue of fact for a hearing. However, we find that to the extent there is an implication in Mr. Lesser's statements¹³¹ that any alleged agreement not to impose MUX survived the arbitration of the 2011 ICA is not reasonable, and will not be considered as the issue of whether such charges were appropriate was vigorously argued and decided in the affirmative during the arbitration proceeding.

3. NCC Matrix Issue 5 (unlawful charges for circuits)

144. NCC asserts there are no circuit installation charges in the 1997 ICA, and that CenturyLink unlawfully charged for 100 percent of the circuit installation charges.

145. CenturyLink argues this issue should be dismissed because the Commission considered the validity of installation charges in the arbitration and found that they were allowable.¹³²

146. We have ruled on the legality of CenturyLink charging for interconnection circuits in Decision No. 72499. Although Appendix A to the 1997 ICA contains a non-recurring charge for Entrance Facilities, the record is not clear which 1997 ICA provision addresses the imposition of circuit installation charges. Consequently, dismissal of NCC Matrix Issue 5 to the extent it relates to the 1997 ICA is denied. As a result, the scope of the subsequent hearing will not address the legality of circuit charges, but will address if such charges are allowed in the 1997 ICA, and whether the parties' course of dealing under the ICA affected whether the circuit installation charges were properly billed.

¹³⁰ Motion to Dismiss at 6, Decision No. 72499 at ¶¶ 113-118.

¹³¹ May 31, 2017 Lesser Affidavit at ¶ 7: "NCC and CenturyLink agreed that there would be no MUX fees by either party for local interconnection traffic. The 2011 ICA uses the similar language as the 1997 ICA MUX fees were only supposed to be applied to UNE's. This was handled by credits in the past."

¹³² Motion to Dismiss at 5.

1 **4. NCC Matrix Issue 6** (Unlawful and anticompetitive charges for Call Detail
 2 Records)
 NCC Matrix Issue 8 (Charges for Call Detail Records)

3 147. NCC argues that CenturyLink’s practice of charging for Call Detail Records is illegal
 4 and anti-competitive.

5 148. CenturyLink argues that NCC’s Matrix Issues 6 and 8 should be dismissed because
 6 NCC signed the Transit Record Amendment which specifically provides in Section 7.6.3 for billing for
 7 call records, and the 2011 ICA specifically authorized the charges in Section 7.10.2 of the Exhibit A.¹³³
 8 CenturyLink argues that when NCC voluntarily opted into the 1997 ICA and when the 2011 ICA was
 9 upheld by the Ninth Circuit Court of Appeals, those agreements became binding contracts and NCC
 10 must live by their terms.¹³⁴

11 149. Decision No. 72499 approved contract language that permits CenturyLink to charge for
 12 Call Detail Records. Decision No. 72499 is a final Order of the Commission that has been upheld by
 13 the Federal courts. Thus, the ability to charge for Call Detail Records has been settled under the 2011
 14 ICA. The amendment to the 1997 ICA that purports to allow CenturyLink to charge NCC for the Call
 15 Details Records is not part of the record. Thus, based on the record as it stands today, CenturyLink’s
 16 Motion to Dismiss these issues is granted with respect to NCC’s claims under the 2011 ICA, but denied
 17 under the 1997 ICA. The issue to be determined at hearing is whether the 1997 ICA as allegedly
 18 amended permits CenturyLink to charge for the Call Detail Records, and whether the course of dealing
 19 under the 1997 ICA affected billable amounts for these records.

20 **5. NCC Matrix Issue 7** (NCC recovery of MUX charges)

21 150. NCC argues that if CenturyLink charges for MUXs, then NCC should be allowed to
 22 charge for MUXs.

23 151. CenturyLink argues that this claim should be dismissed because neither the 1997 nor
 24 2011 ICA include such provision and NCC has not provided evidence in its support.

25 152. NCC does not elaborate on the basis of its claim.

26
 27 ¹³³ Motion to Dismiss at 6; Albersheim Affidavit.

28 ¹³⁴ See *North County Communications Corp of Arizona v. Qwest Corporation*, 824 F.3d 830, 839 (9th Cir. 2016) (“As we have explained, ‘[o]nce the terms[of an ICA] are set, either by agreement or arbitration, and the state commission approves the agreement, it becomes a binding contract.’”)

153. NCC does not cite to a provision in either ICA that addresses its ability to charge for MUXs, nor has it alleged that CenturyLink failed to pay a proffered invoice for MUX charges. NCC opted into the 1997 ICA as it stood, and cannot claim now that it should have included different provisions, and the 2011 ICA is the result of the final and non-appealable Commission decision. We dismiss NCC's Matrix Issue 7 for failure to state a claim.

C. Issues Not Covered by Motions

**1. CenturyLink Issue Matrix 1 and 2 (Refund for call termination over-charges)
NCC Issue Matrix 2 (CenturyLink used improper formula for calculating minutes of use)**

154. CenturyLink's Matrix Issues 1 and 2 seek a refund of amounts CenturyLink paid to NCC for local call termination under the 1997 ICA between May 2007 and May 2008. CenturyLink alleges that it was charged for minutes of use that should have been excluded.

155. NCC Matrix Issue Matrix 2 alleges that CenturyLink unilaterally imposed a formula that understated its payment obligations for terminating local traffic for the period January 2009 through July 2011.

156. These issues are not part of any Motion for Summary Judgment or Motion to Dismiss. There are issues of fact concerning how the minutes of use subject to termination charges were determined under the 1997 ICA. Consequently, CenturyLink's Matrix Issues 1 and 2, and NCC's Matrix Issue 2, which addresses the same topic are appropriately resolved in a hearing.

2. NCC Matrix Issue 9 (disconnected NCC circuits)

157. NCC alleges that CenturyLink unlawfully disconnected NCC circuits.

158. CenturyLink denies that it acted improperly under the terms of the ICAs, however, this issue is not subject to CenturyLink's motions.¹³⁵

159. The issue of whether CenturyLink acted contrary to the terms of the parties' ICAs with respect to the disconnection of NCC's circuits is an issue of fact to be addressed in a hearing.

3. NCC Matrix Issue 10 (Dismissal of CenturyLink's claims for failing to preserve records)

160. It is unclear which count of the Complaint or Counterclaims this allegation is intended

¹³⁵ Reply at 6.

1 to apply.

2 161. This issue is not part of CenturyLink's motions.¹³⁶

3 162. To the extent this claim is relevant, it is an issue of fact that is appropriately determined
4 in a hearing, subject to our previous findings concerning the scope of the proceeding.

5 **6. NCC Matric Issue 12** (CenturyLink's claims not timely)

6 163. NCC alleges that Century waived its billing disputes by not filing them timely.¹³⁷

7 164. NCC provides no information about which charges it claims are not timely, nor the legal
8 foundation for this claim.

9 165. The issue of the application of a statute of limitation for charges by either party will be
10 subject to determination at the hearing.

11 **D. NCC Motion for Partial Summary Judgment**

12 166. Ariz. Rule of Civ. Pro 56 (a) provides that a party may move for summary judgment or
13 partial summary judgment identifying each claim or defense (or part of each claim or defense) on which
14 summary judgment is sought, and that summary judgment shall be granted if the moving party shows
15 that there is no genuine dispute as to any material fact and that the moving party is entitled to judgment
16 as a matter of law.

17 167. NCC's Motion for Partial Summary Judgment is totally deficient for failing to specify
18 the claims on which NCC is seeking summary judgment and failing to provide a verified statement of
19 facts in support of its claim. Even applying a relaxed interpretation of the Rules of Civil Procedure,
20 NCC's Motion for Partial Summary Judgment fails. Therefore, NCC's June 15, 2017 Motion for Partial
21 Summary Judgment is denied. The issue of whether CenturyLink has the records necessary to support
22 its claims will be addressed in the hearing.

23 **E. NCC Request for Mediation**

24 168. NCC seeks a mediation with Commission technical Staff. CenturyLink does not agree
25 that mediation is appropriate or would be beneficial at this point in the dispute.

26 169. This is a billing dispute. The events that led to the dispute are in the past, and do not

27 _____
28 ¹³⁶ *Id.*

¹³⁷ NCC Issues Matrix.

implicate current or future operations. The issue is how much the parties owe each other, not whether or how MF Signaling should be permitted. The Arbitration Decision settled the ANI and MF signaling issue, as well as the legality of charges for circuits, multiplexing and Call Detail Records. The claims in this proceeding involve questions of law and contract interpretation which do not require technical expertise. They are not issues that need to be addressed by Commission Staff that already has so many calls on its time. NCC's claim that a hearing would force it into bankruptcy ignores the fact that NCC initiated the Complaint.

170. NCC has demonstrated a lack of enthusiasm for prosecuting its Complaint.¹³⁸ We find that the request to mediate over CenturyLink's objection is contrary to the principle of the finality of Commission Decisions and is not reasonable or practical. Thus, we deny the request and direct the Hearing Division to set the matter for hearing.

CONCLUSIONS OF LAW

1. CenturyLink and NCC are public service corporations under Article XV of the Arizona Constitution and under Arizona Revised Statutes, Title 40, generally.

2. The Commission has jurisdiction over the parties and the subject matter of the Complaint.

3. Notice of the proceeding was provided in accordance with applicable law.

4. The findings and conclusions as set forth herein are fair and reasonable resolutions of the issues raised by the Motions filed in this matter, are in the public interest, and should be approved.

ORDER

IT IS THEREFORE ORDERED that Qwest Corporation d/b/a CenturyLink QC's Motion for Partial Summary Judgment as it relates to claims 3 through 7 as set forth in its Issue Matrix is granted to the extent that the issues of the legality of charges for interconnection circuits, multiplexing, and Call Detail Records, as well as the provision of ANI over MF Signaling were settled in the 2011

¹³⁸ E.g.: NCC filed its Complaint and then sought to have the matter held in abeyance while it litigated the validity of the 2011 ICA in Federal Court; NCC did not file an Issue Matrix as required by our October 7, 2016 Procedural Order; When it filed an Issue Matrix after being told its Complaint would be dismissed, the Matrix was not complete; NCC failed to appear at the January 26, 2017 Procedural Conference and did not file a request for continuance or otherwise contact the Commission until ordered to show cause why its Complaint would not be dismissed for failure to prosecute; NCC did not file a Response to CenturyLink's Motion to Dismiss until ordered to do so by our February 15, 2017 Procedural Order; NCC failed to file a corporate resolution as directed by our April 4, 2017 Procedural Order until directed a second time.

1 arbitration proceeding and the scope of the hearing on this Complaint matter will not reconsider the
2 legality of these issues.

3 IT IS FURTHER ORDERED that North County Communications Corporation of Arizona, Inc.
4 Motion for Partial Summary Judgment is denied.

5 IT IS FURTHER ORDERED that Qwest Corporation d/b/a CenturyLink QC's Motion to
6 Dismiss North County Communications Corporation of Arizona, Inc.'s Matrix Issues 3 and 7 is
7 granted.

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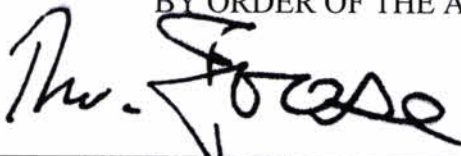
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IT IS FURTHER ORDERED that Qwest Corporation d/b/a CenturyLink QC's Motion to Dismiss North County Communications Corporation of Arizona, Inc.'s Matrix Issues 5, 6 and 8 is granted with respect to the 2011 Interconnection Agreement, but denied with respect to the 1997 Interconnection Agreement.

IT IS FURTHER ORDERED that the Hearing Division shall schedule a hearing to consider the remaining issues of the Complaint, Counterclaims and Affirmative Defenses as discussed herein.

IT IS FURTHER ORDERED that this Decision shall become effective immediately.

BY ORDER OF THE ARIZONA CORPORATION COMMISSION.



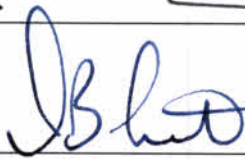
CHAIRMAN FORESE



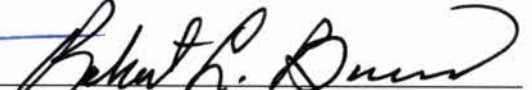
COMMISSIONER DUNN



COMMISSIONER TOBIN



COMMISSIONER LITTLE



COMMISSIONER BURNS



IN WITNESS WHEREOF, I, TED VOGT, Executive Director of the Arizona Corporation Commission, have hereunto set my hand and caused the official seal of the Commission to be affixed at the Capitol, in the City of Phoenix, this 19th day of September 2017.



TED VOGT
EXECUTIVE DIRECTOR

DISSENT _____

DISSENT _____
JR/sa

SERVICE LIST FOR:

NORTH COUNTY COMMUNICATIONS CORP. OF
ARIZONA

QWEST CORPORATION d/b/a CENTURYLINK QC

DOCKET NO.:

T-03335A-12-0368

T-01051B-12-0368

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